

REMARKS

This Amendment is in response to the Office Action mailed on December 3, 2008. Reconsideration of this application is respectfully requested.

Prior Art Rejections

1. The Office action rejected Claims 1-2 under 35 U.S.C. § 102(b) as being anticipated by Winkler (US 6,238,374). This rejection is now moot based on the inclusion of the limitations of Claims 8-9 (now cancelled) into Claim 1. The rejection of Claims 8-9 is addressed below.
2. The Office action rejected Claims 3-12, 14-19 and 21-28 under 35 U.S.C. § 103(a) as being unpatentable over Polaschegg (US 4,966,579) in view of Winkler (US 6,238,374), and further in view of Altman (US 6,547,787). This rejection is respectfully traversed.

As set forth above, Claim 1 has been amended to include the limitations of Claims 8-9 (now cancelled). The Office Action does not address the limitations of Claims 8-9 in the rejection (and for that reason alone does not provide a *prima facie* case of obviousness), and Applicants suggest that the cited references do not disclose or suggest a “waste container suitable to contain a hazardous pharmaceutical in fluid connection with the fluid path”, as recited in Claim 1.

For at least the above reason, Applicants submit that a proper combination of the Polaschegg, Winkler and Altman patents do not suggest or render obvious amended Claim 1 its remaining dependent claims, and that the rejection should be withdrawn.

3. The Office action rejected Claims 13, 20, 29, 30, 33-40 and 50-79 under 35 U.S.C. § 103(a) as being unpatentable over Polaschegg (US 4,966,579) in view of Winkler (US 6,238,374), and Altman (US 6,547,787) as discussed above, and further in view of Falb (US 5,242,403), Kramer (US 5,938,636), or Leslie (US 4,529,401). This rejection is respectfully traversed.

Independent Claim 33 has been amended to include the limitations of Claims 34-35 (now cancelled). The Office Action does not address the limitations of Claims 34-35 in the rejection (and for that reason alone does not provide a *prima facie* case of obviousness), and Applicants suggest that the cited references do not disclose or suggest “a measurement apparatus that detects a physiological signal of the patient related to a heart phase; and a controller that controls fluid delivery from at least one of the first pump and the second pump based upon the physiological signal to synchronize fluid delivery relative to the heart phase to prevent reflux of the pharmaceutical from the local circulation into a system circulation of the patient”, as recited in Claim 33.

Independent Claim 50 has been amended to include the limitations of Claim 51 (now cancelled). The Office Action does not address the limitations of Claim 51 in the rejection (and for that reason alone does not provide a *prima facie* case of obviousness), and Applicants suggest that the cited references do not disclose or suggest “a mixing device associated with the pump device for mixing the one or more fluids for delivering a fluid mixture to the patient”, as recited in Claim 50.

Independent Claim 61 has been amended to include the limitations of Claims 68 and 70 (now cancelled). The Office Action does not address the limitations of Claim 70 in the rejection (and for that reason alone does not provide a *prima facie* case of obviousness), and Applicants suggest that the cited references do not disclose or suggest “a mixing device associated with the pump device for mixing the hazardous fluid and the different fluid for delivering a fluid mixture of the hazardous fluid and the different fluid to the patient”, as recited in Claim 61.

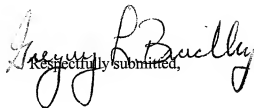
Independent Claim 72 has been amended to include the limitations of Claim 73 (now cancelled). The Office Action does not address the limitations of Claim 73 in the rejection (and for that reason alone does not provide a *prima facie* case of obviousness), and Applicants suggest that the cited references do not disclose or suggest the step of “mixing the one or more fluids in a mixing device associated with the pump device”, as recited by Claim 72.

Moreover, Applicants submit that the proposed combination of 6 patents to arrive at the claimed inventions actually negates a *prima facie* case of obviousness in this application. From a practical standpoint, Applicants submit that one of ordinary skill in the art would not be

motivated to combine or even attempt to try to combine the teachings of these disparate references to try to arrive at the Applicants' claims invention.

For at least the above reasons, Applicants submit that a proper combination of the Polaschegg, Winkler, Altman, Falb, Kramer and Leslie patents do not suggest or render obvious amended Claims 33, 50, 61 and 72 and their remaining dependent claims, and that the rejection should be withdrawn.

Based on the foregoing, Applicants submit that the claims are in condition for allowance. Notice to that effect is earnestly solicited.


Respectfully submitted,

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